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Russell B. Miller
QUALCOMM Incorporated
5775 Morehouse Drive
San Diego CA 92121-1714

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OFFICE OF PETITIONS

In re Application of	:	
Krishnamurthi et al.	:	
Application No. 09/739,923	:	DECISION ON PETITION
Filed: December 19, 2000	:	
Attorney Docket No. QCPA509C	:	

This is a decision on the petition under 37 CFR 1.181, filed December 13, 2005, to withdraw the holding of abandonment for the above-identified application.

On November 15, 2004, the Office mailed a final Office action, which set a three-month shortened statutory period for reply. On January 31, 2005, applicants filed an amendment in response to the final Office action. On February 24, 2005, the examiner mailed an Advisory Action, stating that the amendment failed to place the application in condition for allowance. On Monday, May 16, 2005, applicants filed a notice of appeal and a request for an extension of time for response within the third month, and authorized the Office to charge the Deposit Account for the extension of time fee.

On November 30, 2005, the Office mailed a Notice of Abandonment, which stated that the above-identified application was abandoned in view of applicants' failure to file a proper reply to the final Office action mailed on November 15, 2004. The Notice further stated that the Office received a proposed reply on May 16, 2005, but that it did not constitute a proper reply under 37 CFR 1.113(a) to the final rejection. Lastly, the Notice indicated that a proper reply under 37 CFR 1.113 to a final rejection consisted only of: (1) a timely filed amendment, which placed the application in condition

for allowance; (2) a timely filed Notice of Appeal (with appeal fee), or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114). On December 13, 2005, applicants filed the present petition, a RCE, a request for an extension of time for response within the fifth month, and an authorization to charge the Deposit Account for any necessary fees.

In the present petition, applicants averred that the application was not abandoned and requested that the Office withdraw the holding of abandonment. Specifically, applicants stated that they filed a notice of appeal and appeal fee on May 16, 2005, which set a two-month extendable period to file an appeal brief. Applicants further indicated they could extend this period for response up to five months under 37 CFR 1.136(a). Thus, applicants asserted that the last day for filing a response with a five-month extension of time was December 16, 2005.

Upon a review of the record, applicants' assertions are correct. On December 13, 2005, applicants filed a timely and proper response in the form of a RCE (and a previously filed submission) with a five-month extension of time. Accordingly, the petition is **granted**. The Notice of Abandonment was mailed in error and is hereby withdrawn. The application is restored to pending status in view of the fact that a response was timely filed and received on December 13, 2005.

The Office will charge the \$2,160.00 extension of time fee for filing a response within the fifth month to applicants' Deposit Account as authorized.

The matter is being referred to the Technology Center Art Unit 2683.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions